

Remarks

Applicant has carefully considered the final action mailed August 22, 2008. Applicant hereby submits a Request for Continued Examination and the foregoing new claims. Applicant also submits the following remarks.

Rejection of claims 1 and 11 as obvious over Wuest v. Chu and O'Rear

The examiner rejects claims 1 and 11 as obvious under 35 U.S.C. § 103 over WO 00/112935 to Wuest et al. ("Wuest") in view of U.S. Patent No. 4,471,145 to Chu et al. ("Chu") and U.S. Patent No. 6,392,108 to O'Rear ("O'Rear").

Response

The U.S. Court of Appeals for the Federal Circuit (the "Federal Circuit") recently affirmed that, on the issue of obviousness, **"a flexible TSM test remains the primary guarantor against a non-statutory hindsight analysis."** *Ortho-McNeil Pharmaceutical, Inc. v. Mylan Laboratories, Inc.*, 86 U.S.P.Q.2d 1196, 1201-02 (Fed. Cir. 2008). The examiner has not met the flexible TSM test.

The examiner has not pointed to a teaching or suggestion in any of the cited references of a process of operating an evaporator burner oven, the process comprising "supplying fuel comprising Fischer-Tropsch derived fuel to an evaporation surface of a burner without atomizing the fuel into small droplets under pressure; evaporating at least a portion of the fuel into space surrounding the evaporation surface, producing evaporated fuel; and, combusting at least a portion of the evaporated fuel with oxygen-containing gas to produce heat." Claim 12.

The examiner therefore has not met the flexible TSM test. *Id.* The examiner has not established that the claims are directed merely to **"the predictable use of prior art elements according to their established functions."** *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. ___, 127 S.Ct. 1727, 82 U.S.P.Q.2d 1385, 1396 (U.S. 2007) (emphasis added). Nor has the examiner established that Chu and/or O'Rear provide an **apparent reason to combine known elements** in the fashion claimed. *Id.* (emphasis added).

Applicant respectfully requests entry and allowance of the new claims over the cited references.


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CONCLUSION

For all of the foregoing reasons, Applicant respectfully requests entry and allowance of the new claims. The examiner is hereby authorized to charge any fees, and to deposit any overpayment of fees, to Deposit Account No. 19-1800 (File no.TS8579), maintained by Shell Oil Company

Respectfully submitted,



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